

REMARKS

The applicant respectfully requests reconsideration in view of the following remarks.

The applicant respectfully requests that the withdrawn claims be rejoined. However, if the Examiner disagrees, the applicant authorizes the Examiner to cancel the withdrawn claims.

Claims 1-24 and 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by US 7,540,984 (Calundann '984). Claims 1-24 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0062969 A1 in view of US 6,869,980 (Cui et al.) and Calundann '984. Claims 1-24 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cui et al. in view of US 6,335,419 (Matsuoka et al.) and Calundann et al (US 7,235,320) and Calundann '984. The applicant respectfully traverses these rejections.

Rejections over Calundann '984

Claims 1-24 and 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Calundann '984. Claims 1-24 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0062969 A1 in view of Cui and Calundann '984. Claims 1-24 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cui in view Matsuoka and Calundann '320) and Calundann '984.

Calundann '984 is reference applied in each of the rejections. Calundann '984 is assigned to the same assignee as this application BASF Fuell Cell GmbH. The Examiner stated that this application is to a different assignee. This is not correct. The undersigned filed an assignment on October 23, 2009 from PEMEAS GmbH to BASF Fuell Cell GmbH.

35. U.S.C. 102 (e) states:

(e) the invention was described in - (1) an application for patent, published under **section 122(b)**, by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, **except that an international application filed** under the treaty defined in **section 351(a)** shall have the **effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language** (emphasis added)

Since the PCT published in the German language and not in English language, this reference would have not have a 35 USC 102 (e) filing date based on the filing date of the PCT application.

Checking the family, the earliest publication date is of the German counterpart which is October 24, 2002 (see enclosed copy). The applicant has submitted an English certified translation of their priority document on July 6, 2009. The applicant believes that the claims are supported by their priority application (German application 102 46 461.8 filed October 4, 2002). Therefore, Calundann '984 is not longer prior art. Since all the rejections require Calundann '984 as a reference, these rejections should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 15588-00009-US from which the undersigned is authorized to draw.

Dated: October 23, 2009

Respectfully submitted,

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Enclosure: Family search of Calundann '984

Family Search of Calundann '984

Proton-conducting membrane for use e.g. in fuel cells, is made by coating a support with a solution of aromatic tetra-amine and aromatic polycarboxylic acid in polyphosphoric acid and then heating the coating

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IPC: B01D67/00; B01D71/62; C08G73/18; (+13)

Publication info:

BR0208795 (A) — 2004-03-09

PROTON-CONDUCTING MEMBRANE AND USE THEREOF

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Publication info:

CA2443541 (A1) — 2002-11-07

CA2443541 (C) — 2008-07-15

Proton-conducting membrane and use thereof

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Publication info:

CN1606585 (A) — 2005-04-13

CN100503689 (C) — 2009-06-24

Proton-conducting membrane for use e.g. in fuel cells, is made by coating a support with a solution of aromatic tetra-amine and aromatic polycarboxylic acid in polyphosphoric acid and then heating the coating

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Publication info:

DE10117686 (A1) — 2002-10-24

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Publication info:

EP1379573 (A1) — 2004-01-14

5 **No title available**

in my patents list

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**PROTON-CONDUCTING MEMBRANE AND USE
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**Proton-conducting membrane and the use
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Publication info:

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IPC: C08J5/22; C08G73/06; H01M8/02;
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JP2005536570 (T) — 2005-12-02

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MXPA03009184 (A) — 2004-02-17

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US2004096734 (A1) — 2004-05-20

US7384552 (B2) — 2008-06-10

9 **Proton-Conducting Membrane and the Use
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US2008050514 (A1) — 2008-02-28

US7540984 (B2) — 2009-06-02

10 **Proton-Conducting Membrane and Use
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Publication info:

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IPC: H01M8/00; C08L79/00; H01M4/00;
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US2008057358 (A1) — 2008-03-06

US7582210 (B2) — 2009-09-01

11 **PROTON-CONDUCTING MEMBRANE AND USE
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WO20088219 (A1) — 2002-11-07